Commission of Inquiry
into the Actions of Canadian Officials in Relation to Maher Arar

Policy Review

Domestic Models of Review of Police Forces

A Background Paper
to the Commission's
Consultation Paper

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The 1980s saw major changes towards the establishment of independent bodies – i.e., independent from the police – to review and oversee police activities in Canada. The RCMP complaints commission was established in 1986.[1] A three-year project, setting up a civilian tribunal for handling police complaints in Toronto, Canada's largest city, was made permanent in 1984.[2] This was extended to all police forces in Ontario at the end of the decade[3] – at about the same time that independent tribunals were established in other provinces, such as Manitoba[4] and Quebec.[5]

It is generally acknowledged that the changes across the country were influenced by developments in Toronto.[6] This paper will therefore begin by looking at Ontario, and then examine the process for police complaints in Quebec. Ontario and Quebec are two of the three jurisdictions in Canada in which the RCMP does not play the major role in policing. Newfoundland is the other.[7] All other provinces and territories use the RCMP for policing the province or territory, except in some of the larger cities in these jurisdictions where there are municipal police forces. RCMP officers engaged in policing under contract are subject only to the review of the Commission for Public Complaints Against the RCMP. Moreover, Ontario and Quebec provide two very different models for handling police complaints. Other jurisdictions in Canada fall somewhere between these two models and will be discussed following the discussion of Ontario and Quebec. This survey is not comprehensive, but is designed to give the reader a general picture of what has happened and is happening in Canada. As stated above, most of the country is policed under contract with the RCMP, whose complaint process will be examined in a final section of this paper.

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[1] *An Act to amend the Royal Canadian Mounted Police Act and other Acts in consequence thereof*, Stat.Can. 1986, c. 11.
[2] *An Act to revise the Metropolitan Police Force Complaints Project Act, 1981*, S.O. 1984, c. 63.
[3] *An Act to revise the Police Act and amend the law relating to Police Services*, S.O. 1990, c. 10.
[4] *Law Enforcement Review Act*, R.S.M. 1987, c. L75.
[5] *An act respecting police organization and amending the Police Act and various legislation*, S.Q. 1988, c. 75.
[6] Susan Watt, "The future of civilian oversight of policing" (1991), 33 *Canadian Journal of Criminology* 347 at 349.
[7] Murray W. Chitra, *Policing in Canada: Structure and Accountability Mechanisms*, a paper delivered to the Policing and Police Commissions in Multi-Ethnic Societies Round Table, Colombo, Sri Lanka, February 21, 2003 at 3-4. In Newfoundland, the Royal Newfoundland Constabulary shares policing duties with the RCMP. See the discussion of Newfoundland below.

1. ONTARIO

There were a series of reports in Ontario, starting in 1975, that sought greater civilian review of complaints against the police. Arthur Maloney completed a review of citizen-police complaint procedures for the Metropolitan Toronto Police Board in 1975,[8] shortly before he became Ontario's first Ombudsman. At the time, complaints were handled by the police force's internal complaint bureau, which began operating in 1966.[9] Maloney recommended that investigation of complaints continue to be investigated by the police, but that a commissioner (a lawyer or retired judge) review the complaint process and have the right to hold an adjudicative hearing.[10] The officers investigating the complaint, Maloney suggested, should be physically separate from the police buildings, possibly housed in the new city hall.[11] If the complaint were established by the tribunal, the case would be returned to the chief of police to impose punishment.[12]

The following year, Justice Donald Morand chaired a Royal Commission on Metropolitan Toronto police practices and arrived at similar conclusions,[13] as did Walter Pitman, who reported in 1977,[14] and Roman Catholic Cardinal Emmett Carter in 1979,[15] both of whom dealt with race relations. In 1979, the Attorney General of Ontario, Roy McMurtry, asked Sidney Linden to study the issue.[16] His report advocated allowing the police to do the initial investigation, but would permit an independent civilian review agency to do so in exceptional circumstances. He would also permit the tribunal to

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[8] Arthur Maloney, The Metropolitan Toronto Review of Citizen-Police Complaint Procedure (Toronto: Metropolitan Toronto Board of Commissioners of Police, 1975) ("Maloney Report").
[9] *Ibid.* at 43.
[10] *Ibid.* at 211-214.
[11] *Ibid.* at 229.
[12] *Ibid.* at 217 and 223.
[13] Mr. Justice Donald R. Morand, *The Royal Commission into Metropolitan Toronto Police Practices* (Toronto: The Commission, 1976).
[14] Walter Pitman, Task Force on Human Relations, *Now Is Not Too Late* (Toronto: Council of Metropolitan Toronto, 1977).
[15] Cardinal Gerald Emmett Carter, *Report to the Civic Authorities of Metropolitan Toronto and Its Citizens* (Toronto: Council of Metropolitan Toronto, 1979).
[16] Clare E. Lewis, Sidney B. Linden, and Judith Keene, "Public Complaints Against Police in Metropolitan Toronto – The History and Operation of the Office of the Public Complaints Commissioner," (1986-87), 29 *C.L.Q.* 115 at 119.

impose the penalty. Linden was appointed the first Commissioner in 1981[17] and legislation was enacted the following year, permitting a three-year pilot project for Metropolitan Toronto.[18] Under the Act, the Commissioner could investigate a complaint after receiving an interim report from the police investigators, or if there was undue delay by the police or other exceptional circumstances.[19] Independent hearings could be ordered by the Commissioner if the complainant was not satisfied with disciplinary action by the police.[20] Such a hearing would be a hearing *de novo*.[21] The tribunal could impose a penalty, including dismissal from the force.[22] More permanent legislation was enacted in 1984.[23] The Commissioner would in future be appointed for a five-year term and would be eligible for reappointment.[24]

In 1990, the complaints process legislation was transferred to the *Ontario Police Act*[25] and broadened to require that all police forces in Ontario, including the Ontario Provincial Police ("OPP"), be subject to the Act. (A bill introduced in 1986 would have given other police forces the option of adopting the Toronto procedure, but the bill was never enacted.)[26] The 1990 Act gave the Attorney General the power to direct the Commissioner to initiate a complaint and gave the Commissioner the right to review a decision by a chief of police concerning a complaint.[27] The Commissioner would be responsible to the Attorney General rather than the Solicitor General.[28] The Solicitor General (now the Minister of Community Safety and Correctional Services) had and continues to have responsibility for policing. Tribunals would be chaired by independent

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[17] *Ibid.* at 121.
[18] *An Act for the establishment and conduct of a Project in The Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force*, S.O. 1981, c. 43.
[19] *Ibid.* s. 14(3).
[20] *Ibid.* s. 15(2).
[21] *Ibid.* s. 19(1).
[22] *Ibid.* s. 19(14).
[23] *An Act to revise the Metropolitan Police Force Complaints Project Act, 1981*, S.O. 1984, c. 63.
[24] *Ibid.* ss. 3(1)-(2).
[25] *An Act to revise the Police Act and amend the law relating to Police Services*, S.O. 1990, c. 10, ss. 78 and 91(2).
[26] Bill 90, *An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984*, 2nd Sess., 33rd Leg., Ontario, 1986, cl. 3 (bill never enacted).
[27] *An Act to revise the Police Act and amend the law relating to Police Services*, S.O. 1990, c. 10, ss. 78 and 91(2).
[28] *Ibid.* s. 74.

lawyers,[29] who could make findings on 'clear and convincing evidence'[30] rather than on 'proof beyond a reasonable doubt,' as set out in the earlier legislation.[31] Penalties could be imposed directly by the independent tribunal.[32]

There continued to be strong opposition to an independent scheme by some police associations. The president of the Toronto Police Association expressed this attitude when he wrote: 'The Association fervently believes that the only good external complaints system is a dead complaints system.'[33] In 1995, the Ontario government commissioned a report to study the issue.[34]

The resulting amendments in 1997[35] gave the police the initial role in investigating and making findings concerning complaints about police conduct and police policies. Moreover, only a person 'directly affected' could now make a complaint.[36] Although the Ontario Civilian Commission on Police Services (OCCOPS) has the power under the Act to conduct, on its own motion, investigations, inquiries, and reviews into various matters,[37] its role is seen by the Commission to be limited to appeals from decisions of chiefs of police.[38] They take the position that chiefs of police will do their duty and municipal police services boards will oversee the chief. The Act permits a complainant

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[29] *Ibid.* s. 93(2).
[30] *Ibid.* s. 97 (1).
[31] *An Act for the establishment and conduct of a Project in The Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force*, S.O. 1981, c. 43, s. 19(12).
[32] *An Act to revise the Police Act and amend the law relating to Police Services*, S.O. 1990, c. 10, s. 97(1).
[33] Paul Walter quoted in Susan Watt, "The future of civilian oversight of policing" (1991), 33 *Canadian Journal of Criminology* 347 at 353.
[34] Roderick M. McLeod, *A Report and Recommendations on Amendments to the Police Services Act Respecting Civilian Oversight of Police* (Toronto: Miller Thomson, 1996). See generally, Diane Martin, "Legal Sites of Executive-Police Relations: Core Principles in a Canadian Context," a paper delivered at the Ipperwash Inqiry/Osgoode Hall Law School Symposium on June 29, 2004, at pp. 20 et seq.
[35] *An Act to renew the partnership between the province, municipalities and the police and to enhance community safety*, S.O. 1997, c. 8. The changes in the review system were also consistent with the Conservative government's desire to download services to the municipalities.
[36] *Ibid.* s. 35 (creating s. 57(1) of the *Police Services Act*, R.S.O. 1990, c. P.15).
[37] *Police Services Act*, R.S.O. 1990, c. P.15, ss. 22 and 25(1)(a).
[38] *Ibid.* s. 70; Ontario, *Consultation Report of the Honourable George Adams, Q.C. to the Attorney General and the Solicitor General Concerning Police Cooperation with the Special Investigations Unit* by George Adams, (1998), at 8, online: www.siu.on.ca/adams.asp; George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario* (Toronto, 2003) at 11; conversation with the chair of the commission, Murray Chitra, 3 June 2004, and e-mail of September 8, 2004.

who is dissatisfied with the chief's decision with respect to a matter of policy to request that the municipal police board review the complaint.[39] There is, however, no police board for the Ontario Provincial Police[40] and municipal police services boards do not do audits of police work and generally stay away from day-to-day policing activity.[41] The chair of the Ontario Commission has written that 'the primary responsibility for dealing with public complaints rests with the chief of police under the general direction and guidelines of the local board.'[42] The Commission has, however, examined the subject of disciplinary practices in a number of municipalities.[43]

The Commission has a budget of only about $1½ million, an indication of its relatively limited role.[44] This figure includes the two full-time and 11 part-time members.[45] In contrast, the Military Police Complaints Commission, it should be noted, has a budget of over $4 million,[46] with a military police force of only about 1,200 persons.[47] In 2002, there were 2814 complaints reported in the province of Ontario, of which 466 were reviewed by the Commission at the request of the complainant, and 19 hearings were

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[39] *Police Services Act*, R.S.O. 1990, c. P.15, s. 61(7).

[40] But see *ibid.* sections 10 and 62 which provides for a police board when the OPP engages in contract policing of municipalities and in such cases the police board can become involved in appeals on questions of policy.

[41] Meeting with Toronto Police Service on June 23, 2004 and the OPP on June 28, 2004. See *Police Services Act*, R.S.O. 1990, c. P.15, s. 31(4). A board can, however, "establish guidelines for dealing with complaints": see *ibid.* s. 31(1)(i) and, according to Murray Chitra (e-mail of September 8, 2004) can "audit compliance with its guidelines or a chief's administration of the complaint's system." The Toronto Police Services Board recently recommended new guidelines for handling complaints: see *Globe and Mail*, August 25, 2004.

[42] Murray W. Chitra, *Policing in Canada: Structure and Accountability Mechanisms*, a paper delivered to the Policing and Police Commissions in Multi-Ethnic Societies Round Table, Colombo, Sri Lanka, February 21, 2003 at 12.

[43] Murray Chitra, "Adequacy and Effectiveness of Police Services," paper presented to the Annual Conference of the Police Association of Ontario, 26 February 2001 at 12; see *Report on a Fact-Finding into Various Matters With Respect to the Disciplinary Practices of the Toronto Police Service* (Ontario Civilian Commission on Police Services), July 1999; *Report of an Investigation Pursuant to Section 25 of the Police Services Act (Ottawa-Carleton Regional Police Service)* (Ontario Civilian Commission on Police Services), November 1999; and *Report of an Investigation Pursuant to Section 25 of the Police Services Act (Quinte West Police Service)* (Ontario Civilian Commission on Police Services), January 2002. These reports are cited in Chitra, "Adequacy and Effectiveness of Police Services," at 18 and *Annual Report 2002* (Toronto: Queen's Printer for Ontario) at 13.

[44] Ontario, Ontario Civilian Commission on Police Services, *Annual Report 2002* (Toronto: Queen's Printer of Ontario) at 11.

[45] *Ibid.* at 6.

[46] Canada, Military Police Complaints Commission, *2003 Annual Report: Moving Forward with Commitment* (Ottawa: 2004) at 56.

[47] Canada, Military Police Complaints Commission, "About the Complaints Commission – The Military Police," online: www.mpcc-cppm.gc.ca/100/140_e.html.

ordered.[48] The complaints process now comes under the jurisdiction of the Ministry of the Solicitor General, now called the Ministry of Community Safety and Correctional Services, rather than, as formerly, the Ministry of the Attorney General.[49] The present complaint system, which essentially confines civilian oversight to an appellate review function, is – according to former Justice George Adams, who conducted several reviews on the Special Investigations Unit for the Attorney General of Ontario – 'controversial in many of Ontario's racialized communities.'[50]

A chief of police in Ontario is also authorized to initiate a complaint.[51] There is, however, no legislation in Ontario, as there is in Quebec,[52] requiring a police officer to inform the chief of any action that could lead to discipline by a fellow police officer coupled with a requirement that the chief, in turn, inform the independent complaints Commission.[53] In a recent study of the Toronto police force that had been commissioned by the chief of the Toronto Police Service, retired Justice George Ferguson recommended that the internal affairs unit of the police be located at a site separate from police headquarters in order to create an environment in which reporting of conduct by police officers will take place.[54] There should also be measures, he stated, 'to protect them from recrimination and reprisal.'[55] Further, he recommended that Internal Affairs 'establish independent telephone lines, available to members of the public or members of the Service to report

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[48] Ontario, Ontario Civilian Commission on Police Services, "Complaint Statistics," online: www.occps.ca/englishwebsite/news/news.asp?newsid=51OD20038807052 2UH131O456R42HQ. Since writing the above, the 2003 annual report has been published: http://www.occps.ca/englishwebsite/aboutoccps/annualreport2003.pdf. The statistics are about the same, except that there are now three full-time members and the number of hearings went up from 19 in 2002 to 30 in 2003.

[49] Other aspects of the Commission's work have always come under the jurisdiction of the Solicitor General.

[50] George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario* (Toronto, 2003) at 11.

[51] *Police Services Act*, R.S.O. 1990, c. P.15, s. 64(1.1).

[52] *Police Act*, S.Q. 2000, c. 12, s. 260.

[53] *Code of ethics of Québec police officers*, O.C. 920-90, 27 June 1990, Gazette Officielle du Québec 1990, Part 2, volume 122, No. 28, at page 1760, s. 12. Ontario regulation 123/98, s. 2(1)(a)(vii) provides, however, that it is a disciplinary offence for an officer to "withhold or suppress a complaint or report against a member of a police force" and section 2(1)(c) makes it an offence for an officer to fail to "report a matter that is his or her duty to report."

[54] George Ferguson, *Review and Recommendations Concerning Various Aspects of Police Misconduct* (Toronto, 2003) ("Ferguson Report") at 27. Both the complaints bureau and the internal affairs bureau are part of the Toronto Police Service's Professional Standards Bureau. The complaints bureau has been outside the police headquarters for some time. Discussion with Toronto Police Service on June 23, 2004.

[55] Ferguson Report at 27.

serious police misconduct or corruption on an anonymous basis.'[56] The Toronto Police Service has been moving to implement these recommendations.[57]

The Special Investigations Unit (SIU) – a body that is unique in Canada[58] – is established by the *Police Services Act*.[59] This body, with a budget of over $5 million, reports to the Attorney General.[60] The Act provides that the director of the SIU has the discretion to 'cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.'[61] This has been interpreted to include sexual assaults.[62] The unit was created by the 1990 Act,[63] following a report by Clare Lewis on race relations and policing,[64] set up after several controversial shootings of black men by police in Ontario.[65] The SIU survived the changes in 1997. The SIU investigated 151 incidents in the year ending March 31, 2004, which resulted in four charges being laid.[66] Some commentators take the position that greater use should be made by the SIU of disciplinary charges which are less difficult to establish than the 'proof beyond reasonable doubt' standard in criminal cases.[67]

There have been problems about cooperation by individual police officers, which have been addressed by George Adams in a series of reports to the Attorney General.[68] The

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[56] *Ibid.* at 29.
[57] Meeting with Toronto Police Service on June 23, 2004. In August 2004 Internal Affairs was transferred from Headquarters to a former substation in Etobicoke, part of the City of Toronto: see the *Globe and Mail*, August 17, 2004.
[58] SIU Annual Report, 2002-03 at 1.
[59] *Police Services Act*, R.S.O. 1990, c. P.15, s. 113.
[60] The transfer from the Solicitor General to the Attorney General occurred in September 1992 following a report by Stephen Lewis on police and race relations in Toronto: see George Adams, *Consultation Report of the Honourable George Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit*, www.siu.on.ca/adams.asp, (Toronto, 1998) at 10.
[61] *Police Services Act*, R.S.O 1990, c. P.15, s. 113; see also the 1998 Adams report on the SIU.
[62] Meeting with Toronto Police Service, June 23, 2004.
[63] *An Act to revise the Police Act and amend the law relating to Police Services*, S.O. 1990, c. 10, s. 113.
[64] George W. Adams, *Consultation Report of the Honourable George Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit*, www.siu.on.ca/adams.asp, (Toronto, 1998) ("Adams Report") at 7.
[65] George W. Adams, *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario* (Toronto, 2003) ("2003 *Review Report*") at 9.
[66] Adams, 2003 *Review Report* at 9.
[67] Ian Scott's forthcoming article on the SIU in the *Criminal Law Quarterly*.
[68] Adams, 2003 *Review Report* at 9.

civilian investigators – they cannot be active police officers[69] – automatically move in without the necessity of the existence of a complaint. Changes were made in the functioning of the unit as a result of Adams' 1998 report, and in a further report in 2002 he stated: 'Civilian oversight exists at the crossroads of some very powerful and competing forces in a society. Controversy and related emotional upset from time to time are to be expected. The parties, however, have made great progress on all fronts since and because of the implementation of the 1998 recommendations.'[70]

Ontario police are involved in national security investigations. The OPP, for example, has a provincial anti-terrorism unit ('PATS') which conducts 'strategic intelligence operations to proactively address terrorism and extremism in Ontario.' The unit is an OPP-led force which is comprised of over 20 members of an intelligence team from municipal, provincial, and federal agencies. There is also a smaller OPP surveillance team working in the field of national security.[71] There are no special mechanisms for handling complaints and reviewing activities of these units other than those discussed above. The chair of the Ontario Commission is aware of these units and of the OPP's involvement with the RCMP and CSIS in the Integrated National Security Enforcement Teams, INSETs, but thus far the Commission has not dealt with any complaints in the national security area.[72]

In the spring of 2004, Attorney General Michael Bryant announced that his Ministry along with the Ministry of Public Safety and Security would be studying the issue of complaint review processes for police conduct. On June 10, 2004, the government announced that former Chief Justice Patrick LeSage would be heading a committee to review the complaints system in Ontario.[73]

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[69] *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(3).
[70] Adams, 2003 *Review Report* at 74-75.
[71] Ontario, OPP Business and Financial Services Bureau, *OPP Corporate Business Plan 2003*, www.opp.ca, at 11. The Business Plan refers to the unit as "PATU".
[72] Conversation with Murray Chitra, Chair of the Ontario Civilian Commission on Police Services, 3 June 2004.
[73] Ministry of the Attorney General, News Release dated June 10, 2004, "Ontario government launches police complaint system review."

2. QUEBEC

Legislation to deal with the independent review of public complaints against the Quebec provincial police, the Sûreté du Québec, as well as all municipal and aboriginal police forces in Quebec, was first enacted in 1988.[74] Before that, discipline was handled by the police themselves. In 1964, the Montreal police set up an internal affairs bureau, two years earlier than the Toronto bureau was established.[75] The 1988 legislation has been amended several times, but the latest version of the *Quebec Police Act*[76] does not differ to any great extent from the thrust of the 1988 legislation. Quebec has not been subject to the same swings in philosophy with respect to police complaints as has Ontario.

In contrast to the present Ontario legislation, where members of the police force of the officer that is the subject of the complaint normally do the initial investigation, complaints in Quebec are handled by an independent body, the Police Ethics Commissioner (Commissaire à la déontologie policière). In the 1988 legislation, the Commissioner could allow the police force whose member was the subject of the complaint to investigate the matter, but amendments made in 1997 clearly provide that 'An investigator may not be assigned to a file involving the police force to which he belongs or has belonged.'[77] This is similar to the legislation relating to the Ontario Special Investigations Unit,[78] but, of course, applies to a broader range of matters. In almost all cases the Quebec Commission does the investigation itself or uses private investigators, many of whom are retired police officers.[79] Its budget is about double that of the Ontario Commission.[80] At present, the Quebec commission has nine lawyers, ten investigators, and three conciliators.[81] The Quebec Commission has powers of entry to

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[74] *An act respecting police organization and amending the Police Act and various legislation*, S.Q. 1988, c. 75.
[75] Maloney Report, at 134-5.
[76] *Police Act*, S.Q. 2000, c. 12.
[77] *Ibid.* s. 171.
[78] *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(6).
[79] Conversation with Paul Monty, the Police Ethics Commissioner, 7 June 2004.
[80] Québec, Commissaire à la déontologie policière, *Rapport Annuel 2000-2001*, (Québec: Publications du Québec, 2001) at 12.
[81] Conversation with Paul Monty, 7 June 2004. The 2002-2003 Annual Report states that there are 2 directors, 1 manager, 9 lawyers, 13 professionals, 1 technician and 12 support staff employed by the ethics

police premises and power to require the production of documents.[82] There are no such powers for the Ontario Commission for the normal complaint process.[83]

After the initial investigation, the Commission can dismiss the complaint, send it on for a criminal investigation, or try to reconcile the parties involved in the complaint. The Commission says that about 50% of the complaints are dismissed after the initial investigation, about one third are sent to conciliation, and about 10-15% are sent for criminal investigation.[84] Conciliation by the Commission's independent conciliator is required for all non-serious cases in Quebec. It is not used when the complaint involves death or serious bodily harm, criminal offences, or other serious misconduct.[85] A complainant cannot object to conciliation, without a valid reason.[86] In Ontario, a police chief may attempt informal resolution of the complaint if the parties consent and if the alleged conduct 'appears to be obviously conduct that is not of a serious nature'.[87] A successful conciliation necessarily requires the consent of all parties.[88] There is a strong incentive for the officer in Quebec to attempt to get an agreement because if the conciliation succeeds, no record of the complaint or the settlement is recorded on the member's personnel file. The office of the Commissioner, however, keeps such a record.[89]

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commissioner: see Québec, Commissaire à la déontologie policière, *Rapport Annuel de Gestion 2002-2003*, (Québec, 2003).

[82] *Police Act*, S.Q. 2000, c. 12, ss. 174 and 189; see Paul Ceyssens, *Legal Aspects of Policing*, v.2 (Earlscourt Legal Press, 2002) at 7-67.

[83] But the commission has the powers of a commissioner under the Public Inquiries Act when it operates under sections 22 and 25 of the Act. See *Police Services Act*, R.S.O. 1990, c.P.15, s.22(2).

[84] Conversation with Paul Monty, 7 June 2004; the 2002-2003 Annual Report states that 53.4% of complaints are rejected as inadmissible, 32.2% result in conciliation, 12.2% result in an investigation, and 2.2% are withdrawn: Québec, Commissaire à la déontologie policière, *Rapport Annuel de Gestion 2002-2003*, (Québec, 2003).

[85] *Police Act*, S.Q. 2000, c. 12, s. 148.

[86] *Police Act*, S.Q. 2000, c. 12, s. 147; see Ceyssens, *Legal Aspects of Policing*, v.2, at 7-59.

[87] *Police Services Act*, R.S.O. 1990, c. P.15, s. 58(1).

[88] British Columbia, Office of the Police Complaint Commissioner, "Quebec Police Complaint Procedure: Commissaire à la déontologie policière," by A. Perry.

[89] *Police Act*, S.Q. 2000, c. 12, ss. 162-163.

The Commissioner may also summon the police officer to appear before a separate independent body, the Comité de déontologie policière,[90] which holds hearings to determine if a police officer has committed a breach of the code of ethics. In the past year, the Commission received about 1,300 complaints and the Comité conducted about 60 hearings.[91] This committee also hears appeals by a complainant from a dismissal of a complaint by the Commissioner after an investigation.[92] It can impose a number of penalties, including a warning, a rebuke, a dismissal without pay for 60 days, and dismissal.[93] There is an appeal from the tribunal to the Court of Quebec. In Ontario there is an appeal from the Commission to the Divisional Court,[94] where the standard is 'patent unreasonableness' by the Commission.[95]

The Quebec legislation provides greater security of tenure for the heads of both Quebec agencies than the Ontario legislation, which says nothing about the qualifications for appointment or the terms of office.[96] In Quebec, in contrast, the Commissioner and full-time members of the hearing committee must be members of the bar for at least ten years.[97] Appointments in Quebec are for five years and may be renewed.[98] In practice, the Ontario appointments are for three-year fixed terms.[99] The original 1988 legislation in Quebec provided that there would be police representation on the panels[100] and a tripartite tribunal was therefore necessary. In the 1997 amendments, police representation was eliminated and one-person tribunals were permitted.[101]

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[90] Canadian Association for Civilian Oversight of Law Enforcement (CACOLE), *Compendium of Civilian Oversight Agencies in Canada*, Hyacinthe Miller, ed., (CACOLE, 2002) online: www.cacole.ca/english/resource_library.html# at 22.

[91] Paul Monty, speaking notes (January 2004) at 2-3 (unpublished, on file with the author).

[92] CACOLE, *Compendium of Civilian Oversight Agencies in Canada*, at 26.

[93] *Police Act*, S.Q. 2000, c. 12, s. 234.

[94] *Police Services Act*, R.S.O. 1990, c. P.15, s. 71(1); Ceyssens, *Legal Aspects of Policing*, v.2, at 7-93.

[95] *Canadian Civil Liberties Association v. Ontario (Civilian Commission on Police Services)* (2002), 61 O.R. (3d) 649 (C.A.) at 658-59; see Ceyssens, *Legal Aspects of Policing*, v.2, at 7-82.

[96] Ceyssens, *Legal Aspects of Policing*, v.2, at 7-14 and 7-16.

[97] *Police Act*, S.Q. 2000, c. 12, ss. 129 and 198; Ceyssens, *Legal Aspects of Policing*, v.2, at 7-14 and 7-15.

[98] *Police Act*, S.Q. 2000, c. 12, ss. 130 and 199; Ceyssens, *Legal Aspects of Policing*, v.2, at 7-16 and 7-17.

[99] Murray W. Chitra, *Policing in Canada: Structure and Accountability Mechanisms*, a paper delivered to the Policing and Police Commissions in Multi-Ethnic Societies Round Table, Colombo, Sri Lanka, February 21, 2003 at 10.

[100] *An act respecting police organization and amending the Police Act and various legislation*, S.Q. 1988, c. 75, s. 101.

[101] *An act to amend the act respecting police organization and the Police Act as regards police ethics*, S.Q. 1997, c. 52, s. 36.

The Quebec Commission is notified within five days of all complaints received by the police and keeps a record of them,[102] in contrast to the Ontario Commission, which no longer requires that the police notify the Commission of complaints, as they were required to do under the earlier legislation.[103] Complaints in Quebec can be lodged by 'any person',[104] whereas in Ontario a complaint can now only be lodged by a person 'directly affected'. The Ontario statute therefore excludes persons who simply observed the incident[105] and specifically excludes complaints by police officers from the same police force.[106] The Quebec Commission is not specifically given the power to initiate a complaint, but the minister may request an investigation.[107] Moreover, there is an obligation on police officers under the *Police Act* 'to inform the chief of police of the conduct of another police officer likely to constitute a breach of discipline or professional ethics'.[108] In turn, the chief must inform the Ethics Commissioner of any 'presumed commission of an act derogatory' to the Code of Ethics.[109] The Commissioner will in appropriate cases contact the citizen to see if he or she wishes to make a formal complaint.[110] So, in theory, the Commission receives notification of all complaints received by the police as well as potential complaints reported to the chief through other police officers.

Unlike Ontario, Quebec has a detailed code of ethics for the police set out in legislation. Complaints are based on that code.[111] Some examples of the duties and standards of conduct set out in the code are that a police officer must 'produce official identification

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[102] *Police Act*, S.Q. 2000, c. 12, s. 145; see also Ceyssens, *Legal Aspects of Policing*, v.2, at 7-48.
[103] *An Act to revise the Police Act and amend the law relating to Police Services*, S.O. 1990, c. 10, s. 77(5)(a); Ceyssens, *Legal Aspects of Policing*, v.2, at 7-48.
[104] *Police Act*, S.Q. 2000, c. 12, ss. 128 and 143.
[105] *Police Services Act*, R.S.O. 1990, c. P.15, s. 57(1); Ceyssens, *Legal Aspects of Policing*, v.2, at 7-22 and 7-23.
[106] *Police Services Act*, R.S.O. 1990, c. P.15, ss. 57(7)(c)-(c.1); Ceyssens, *Legal Aspects of Policing*, v.2, at 7-18.
[107] *Police Act*, S.Q. 2000, c. 12, s. 166; Paul Ceyssens, *Legal Aspects of Policing*, v.2 (Earlscourt Legal Press, 2002) at 7-23, fn. 7.
[108] *Police Act*, S.Q. 2000, c. 12, s. 260.
[109] *Code of ethics of Québec police officers*, O.C. 920-90, 27 June 1990, Gazette Officielle du Québec 1990, Part 2, volume 122, No. 28, at page 1760, s. 12.
[110] Conversation with Paul Monty, 7 June 2004.
[111] *Police Act*, S.Q. 2000, c. 12, s. 143; Ceyssens, *Legal Aspects of Policing*, v.2, at 7-28.

when any person asks him to do so;'[112] must not 'use greater force than is necessary to accomplish what is required or permitted';[113] must not 'illegally dispose of property belonging to any person';[114] and must not 'show, handle or point a weapon without justification.'[115] One aspect of Ontario's legislation is broader than Quebec's. In Ontario, a complaint can relate to 'the policies of or services provided by a police force,' in addition to a complaint about the conduct of a police officer.[116]

3. REVIEW MECHANISMS IN OTHER PROVINCES AND TERRITORIES

The review mechanisms in other provinces and territories vary widely.[117] Prince Edward Island – no doubt, because of its small population and the fact that all but several cities on the Island are policed by the RCMP – does not have an independent review body.[118] The other provincial review bodies fall somewhere between the Quebec and Ontario models.

The three territories in northern Canada do not have any specific legislation because all policing is done by the Royal Canadian Mounted Police.[119] The Yukon RCMP Detachment, "M" Division, is solely responsible for policing in the Yukon Territory.[120] Complaints are dealt with through the Commission for Public Complaints Against the RCMP process, described in the next section of this paper. Similar to the Yukon, "G"

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[112] *Code of ethics of Québec police officers*, O.C. 920-90, 27 June 1990, Gazette Officielle du Québec 1990, Part 2, volume 122, No. 28, at page 1760, s. 5(2).
[113] *Ibid.* s. 6(1).
[114] *Ibid.* s. 8(2).
[115] *Ibid.* s. 11(1).
[116] *Police Services Act*, R.S.O. 1990, c. P.15, s. 56(1).
[117] See generally, Paul Ceyssens, *Legal Aspects of Policing* (Saltspring Island, B.C.: Earlscourt Legal Press, 2002).
[118] See Commission for Public Complaints Against the RCMP, "Links", online: http://www.cpc-cpp.gc.ca/DefaultSite/Links/index_e.aspx?ArticleID=76, last accessed August 11, 2004. There are four cities with their own police forces.
[119] See Police Link, "Northwest Territories", online: http://www.policelink.ca/nwt.html, last accessed August 11, 2004; Police Link, "Nunavut", online: http://www.policelink.ca/Nunavut.html, last accessed August 11, 2004; Police Link, "Yukon", online: http://www.policelink.ca/Yukon.html, last accessed August 11, 2004.
[120] http://www.policelink.ca/Yukon.html#rcmp. The Yukon *Auxiliary Police Act* contains provisions for complaints against auxiliary police officers to be processed through the standard RCMP procedure: http://www.gov.yk.ca/legislation/acts/aupo.pdf, s9.

Division of the RCMP has sole responsibility for policing in the Northwest Territories.[121] The only legislation in the Territory specific to policing is the *Royal Canadian Mounted Police Agreement Act*[122], which authorizes the government to contract for the services of the RCMP. Nunavut operates under the same *Royal Canadian Mounted Police Agreement Act* as does the Northwest Territories.[123] "V" Division has responsibility for policing the Territory and the headquarters for processing complaints and other matters is located in Iqaluit.[124]

Newfoundland, like Ontario and Quebec, has a provincial police force, the Royal Newfoundland Constabulary, which polices St. John's and several other areas in the province. The remaining areas are handled by the RCMP.[125] The review mechanism is closer to Ontario's model than to Quebec's.[126] Complaints are first dealt with by the police themselves and if either the complainant or the officer involved in the complaint is dissatisfied with the outcome, an appeal can be taken to the Royal Newfoundland Constabulary Public Complaints Commission.[127] The Commission, which receives notice of all complaints received by the police,[128] is headed by a Commissioner appointed by the cabinet for a five-year term, subject to reappointment.[129] As in other jurisdictions in Canada, there is provision for the informal resolution of complaints at the police[130] and at the Commission level[131]. The Commissioner generally investigates through contract investigators.[132] If the Commissioner does not affirm the decision of the police chief, the matter is referred to an adjudicator for a hearing.[133] This is like the Quebec system where the investigation and adjudication functions are kept separate. The adjudicator is selected

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[121] http://www.policelink.ca/nwt.html.
[122] http://www.justice.gov.nt.ca/PDF/ACTS/RCMP_Agree.pdf.
[123] *Ibid.*
[124] http://www.policelink.ca/Nunavut.html .
[125] Conversation with Helen Escott, communications strategist with the RCMP in Newfoundland, September 2004.
[126] *Royal Newfoundland Constabulary Act*, S.N. 1992, c. R-17; see also, Royal Newfoundland Constabulary Public Complaints Commission, online: http://www.gov.nf.ca/rncpcc/, last accessed August 11, 2004.
[127] *Royal Newfoundland Constabulary Act* at s. 25(3) and (4).
[128] *Ibid.* at s. 24(2).
[129] *Ibid.* at s. 18(3).
[130] *Ibid.* at s. 25(1)(a).
[131] *Ibid.* at s. 26(3).
[132] The Canadian Association for Civilian Oversight of Law Enforcement (CACOLE), *Compendium of Civilian Oversight Agencies in Canada* (June 2004) ("CACOLE Compendium") at 33.
[133] *Royal Newfoundland Constabulary Act* at s. 28(2).

from a panel of twelve persons, all lawyers, who have been appointed for three-year terms, subject to 'good behaviour' and capable of being renewed. As in some other provinces, such as Nova Scotia[134] and British Columbia,[135] the decision is made on a 'balance of probabilities'.[136] In Ontario, the standard is 'clear and convincing evidence.'[137] There is an appeal from the Commissioner or the adjudicator in Newfoundland to the trial division of the Superior Court, with leave of the court.[138]

Nova Scotia's review system is similar to that in Newfoundland, but there are some differences. Like Newfoundland, the police conduct the initial investigation with an appeal by the complainant to the Nova Scotia Police Commission, first established in 1976.[139] If the Commission determines that the complaint has merit, it may refer the matter to a separate independent Review Board,[140] whose members are appointed by cabinet.[141] If disciplined following the initial investigation, the officer may appeal directly to the Review Board.[142] The Review Board hearing constitutes a trial de novo.[143] Unlike in Newfoundland, decisions of the Review Board are final.[144] As in Newfoundland, a third person can bring a complaint if the person directly affected by the conduct consents.[145] The Commission, whose members are appointed for renewable three-year terms,[146] can also conduct its own investigation or inquiry into the conduct of a member of a police force or into other matters and can report its findings.[147] There are six Commissioners and six Review Board members.[148]

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[134] *Police Regulations made under Section 46 of the Police Act*, R.S.N.S. 1989, c. 348 at s. 28G.
[135] *Police Act*, R.S.B.C. 1996, C. 367 at s. 59(5)(a) and 61(6)(a).
[136] *Royal Newfoundland Constabulary Act* at s. 33(1)(2) and (3).
[137] *Ontario Police Services Act*, R.S.O. 1990, c. P. 15 at s. 25(4).
[138] *Royal Newfoundland Constabulary Act* at s. 36.
[139] *Police Act*, R.S.N.S. 1989, c. 348; see also Nova Scotia Information Directory, Police Commission, N.S., online: http://www.gov.ns.ca/govt/foi/police.htm, last accessed August 12, 2004.
[140] *Police Regulations* at s. 14(10).
[141] *Police Act* at s. 28(1).
[142] *Police Regulations* at s. 13(1).
[143] *Ibid.* at s. 32.
[144] *Ibid.* at s. 33(3).
[145] *Ibid.* at s. 9(2).
[146] *Police Act* at s. 4(4).
[147] *Ibid.* at s. 8(2). Note that the Commission may conduct an investigation on its own motion only with the consent of the Solicitor General or when requested by a majority of a municipal board of police commissioners.
[148] CACOLE Compendium at 30.

In New Brunswick, complaints that are made to the New Brunswick Police Commission,[149] whose members are appointed by the cabinet for a maximum term of ten years,[150] can be referred to the police or a police board or municipal council.[151] The Commission can also conduct its own investigation,[152] appoint an investigator,[153] and hold a hearing.[154] It has the power to investigate on its own initiative in the absence of a complaint 'any matter relating to any aspect of the policing of any area of the Province'.[155] Unlike Newfoundland and Nova Scotia, the investigative and adjudicative functions are not kept separate. As with the RCMP, there is a different process if a police officer is disciplined. In such case there is a labour relations type procedure, whereby the officer may appeal to a three-person arbitration board, with the chair selected from a list maintained by the Minister of Public Safety of lawyers or past or present members of the judiciary.[156] Unlike the RCMP complaints process, the Commission is kept informed of complaints received by the police and their disposition.[157]

Moving from east to west – and bypassing Quebec and Ontario that have already been dealt with – we come to Manitoba, which is closer to the Quebec model than any other province. In 1984, the *Law Enforcement Review Act* was proclaimed and the following year the Law Enforcement Review Agency was created.[158] The Review Agency is located in the Department of Justice. Third party complaints are permitted, but as in Nova Scotia and Newfoundland, the person affected by the conduct has to consent.[159] As in

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[149] New Brunswick, New Brunswick Police Commission, online: http://app.infoaa.7700.gnb.ca/gnb/pub/DetailOrgEng1.asp?OrgID1=160&DeptID1=79, last accessed August 12, 2004.
[150] *Police Act*, S.N.B. 1977, c. P-9.2 at s. 18(1).
[151] *Ibid.* at s. 26(2)(a) and 26(3).
[152] *Ibid.* at s. 26(2)(b).
[153] *Ibid.* at s. 26(2)(b)(i).
[154] *Ibid.* at s. 26(2)(b)(ii).
[155] *Ibid.* at s. 22(4).
[156] *Ibid.* at s. 30. If the parties agree, the arbitration board can consist of a single arbitrator.
[157] *Ibid.* at s. 27(3).
[158] *Law Enforcement Review Act*, R.S.M. 1987, c. L75; see also, Manitoba, Law Enforcement Review Agency, online: http://www.gov.mb.ca/justice/lera/misc/history.html, last accessed August 12, 2004; Manitoba, Office of the Commissioner, Law Enforcement Review Agency, *Annual Report 2002*, online: http://www.gov.mb.ca/justice/lera/annual_report/2002lera_annual_report.pdf, last accessed August 12, 2004.
[159] *Law Enforcement Review Agency Act* at s. 6(2) and s. 9(2).

Quebec,[160] the Review Agency does not use the investigation resources of the police force whose members are being investigated.[161] The Review Agency's powers of search and seizure are broad[162] and they can demand relevant information from the chief of police of the department involved in the complaint.[163] The complainant can appeal a decision dismissing a complaint to a provincial court judge.[164] The Review Agency cannot impose a penalty unless the officer involved agrees with its imposition.[165] If the officer disputes the recommended penalty, then the matter is referred to a provincial court judge for a hearing into the appropriate penalty.[166] A further appeal to the superior court's trial division is permitted on a question of law.[167]

As in Quebec, Newfoundland, and Nova Scotia, the investigative and adjudicative functions are kept separate in Saskatchewan. The Saskatchewan Police Complaints Investigator, established in 1992,[168] keeps a record of all complaints received and their disposition.[169] Complaints to the Investigator or to the police are investigated by the chief of police 'in consultation with the investigator.'[170] In addition, the Investigator has the power to 'conduct an investigation' or 'assume responsibility and control of an existing investigation'.[171] Any member of the public may initiate a complaint which can be directed against actions of a member of the police or 'the policies of or the services provided by the police service.'[172] Complaints regarding policies and services are dealt with by either the board of police commissioners or the municipal council, as

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[160] *Police Act,* S.Q. 2000, c. 12 at s. 171.
[161] *Law Enforcement Review Agency Act* at s. 12(7).
[162] *Ibid.* at s. 12(5).
[163] *Ibid.* at s. 12(2).
[164] *Ibid.* at s. 13(2).
[165] *Ibid.* at s. 16(4). The Commissioner may recommend a penalty that is then imposed by the chief of police in cases where the officer consents to its imposition.
[166] *Ibid.* at s. 16(5).
[167] *Ibid.* at s. 31(1).
[168] *The Police Act, 1990*, S.S. 1990-91, c. P-15.01; Saskatchewan Justice, Saskatchewan Police Complaints Investigator, *Annual Report 2003-2004*, online: http://www.saskjustice.gov.sk.ca/overview/annual/03-04ARPoliceComplaintsInvestigator.pdf, last accessed August 12, 2004.
[169] *The Police Act* at s. 39(1)(b).
[170] *Ibid.* at s. 45(1).
[171] *Ibid.* at s. 45(3).
[172] *Ibid.* at s. 38(1) and s. 43(1).

appropriate.[173] Where the complaint cannot be dealt with informally, a hearing is conducted by a Hearing Officer (a lawyer or former judge) appointed by cabinet,[174] who may impose a range of penalties.[175] Decisions of the Hearing Officer can be appealed to the Saskatchewan Police Commission.[176] No further appeal is specifically provided in the Act.

Alberta provides a mix of procedures. At the municipal level, both Edmonton and Calgary have police commissions that oversee their police department's handling of complaints. There is also an independent provincial board, the Law Enforcement Review Board, established in 1973, that is responsible for hearing appeals from dispositions of complaints dealt with by the chief of police.[177] The Calgary Police Commission, consisting of nine civilian members appointed by Calgary City Council,[178] monitors police investigations through an employee called the Citizen Complaints Monitor.[179] The Commission does not have authority to take over control of an investigation or disposition of a complaint regarding a police officer's alleged misconduct. It does, however, have responsibility to deal with complaints regarding the police chief, as well as appeals from the disposition of complaints regarding police policies and services.[180] A similar system is in operation in Edmonton.[181] Other municipalities in Alberta that have their own police force also have commissions that deal with police policies and services, but do not have a complaints monitor. In all municipalities with their own force, the complainant or the officer involved in a complaint can appeal any decision by the chief of police to the Law Enforcement Review Board,[182] which consists of five members appointed by the cabinet for a maximum term of three years, subject to renewal.[183] The Review Board may allow or dismiss the appeal, vary the decision being appealed, direct

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[173] *Ibid.* at s. 44.
[174] *Ibid.* at s. 48(1)(b) and s. 17(1).
[175] *Ibid.* at s. 58.
[176] *Ibid.* at s. 59(3).
[177] Government of Alberta, Solicitor General, online: http://www.solgen.gov.ab.ca/lerb/role_mandate_member.aspx, last accessed August 12, 2004.
[178] Calgary Police Commission, "Complaints About the Police", online: http://www.calgary.ca/docgallery/BU/cpc/complaints0203.pdf, last accessed August 12, 2004.
[179] *Ibid.* See also CACOLE at 9.
[180] *Ibid.*
[181] CACOLE at 10-11.
[182] *Police Act*, R.S.A. 2000, c. P-17 at s. 48.
[183] *Ibid.* at s. 9. The Board must consist of at least three members.

that a new hearing be held, or take any other action deemed appropriate.[184] A further appeal to the court of appeal can be made with leave of the court.[185] A proposal by a 2002 legislative committee that a new provincial body be established to investigate complaints against the police was rejected by the government in March 2004,[186] although the government accepted a recommendation that all municipalities with a police force establish a public complaints monitor.[187]

The last jurisdiction to be discussed is British Columbia. It established an Office of the Police Complaint Commissioner in July of 1998,[188] following a report by Justice Wallace Oppal.[189] Many of the recommendations of the Oppal Report were incorporated into the 1998 amendments, including having the Office of the Police Complaint Commissioner replace the BC Police Commission that had been established in 1974.[190] In 2003-2004, the Complaint Commissioner had an annual budget of just under a million dollars and a full time staff complement of seven persons.[191] In 2003, it received 456 complaints, ordered 56 investigations and held two public hearings.[192] The process for appointing the Commissioner, designed to increase the Commissioner's independence, is unique in Canada. He or she is an officer of the legislature, appointed by a special committee of the legislature.[193] The term of office is for a non-renewable six-year term and the Commissioner may only be removed from office for cause or incapacity on the recommendation of at least two thirds of the members of the legislature.[194] The Office of

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[184] *Ibid.* at s. 20(2).
[185] *Ibid.* at s. 18.
[186] Government of Alberta, Press Release, "Provincial Policing Standards and Enhanced Civilian Oversight Coming for Alberta Police Services" (March 26, 2004, online: http://www.gov.ab.ca/acn/200403/16157.html, last accessed August 12, 2004.
[187] Government of Alberta, Solicitor General, *Government Policing Plan and Response to MLA Policing Review Committee Report* (March 2004), online: http://www.gov.ab.ca/acn/images/2004/304/16157.pdf, last accessed August 12, 2004.
[188] E-mail correspondence from Cynthia Dyck, The Office of the Police Complaint Commissioner, August 12, 2004; see also British Columbia, The Office of the Police Complaint Commissioner, online: http://www.opcc.bc.ca/OPCC%20Home%20Page.htm, last accessed August 12, 2004.
[189] Justice Wallace T. Oppal, *Closing the Gap: Policing and the Community*, (July 1994), online: http://www.pssg.gov.bc.ca/publications/oppal/ClosingTheGap.pdf, last accessed August 12, 2004.
[190] *Ibid.* at 19.
[191] CACOLE Compendium at 5.
[192] *Ibid.* at 6.
[193] *Police Act*, R.S.B.C. 1996, c. 367, as am. at s. 47(1) and (2).
[194] *Ibid.* at s. 47(3) and (4) and s. 48.

the Commissioner does not itself conduct investigations.[195] As in almost all other jurisdictions, these are conducted by the police, but there are ongoing reporting requirements to the Commissioner during an investigation,[196] and the Commissioner may appoint a staff person to oversee the conduct of an investigation if 'the appointment is necessary in the public interest.'[197] The Commissioner receives a full transcript of all proceedings, reviews all complaint dispositions, and can ask for further reasons for the disposition of the complaint.[198] After the case is concluded by the police authority, the complainant or the officer can request that the Commissioner establish a public hearing to be chaired by a retired judge.[199] The Commissioner can establish such a hearing without such a request, if the Commissioner determines that it 'is necessary in the public interest.'[200] No appeal is provided from a decision of the Commissioner,[201] but there is an appeal from the hearing adjudicator to the court of appeal, with leave, on questions of law.[202]

4. COMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

Public complaints against the Royal Canadian Mounted Police are heard by an independent body, the Commission for Public Complaints Against the RCMP. The legislation establishing the Commission was enacted in 1986[203] and came into force in 1988.[204] It was originally called the RCMP Public Complaints Commission, but that name was changed under the Federal Identity Program Policy, although not in the statute, to its present title in 2001 to indicate that the body is an independent entity and not part of

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[195] Philip C. Stenning, *Review of Part 9 (Complaint Procedure) of the British Columbia Police Act as Amended by Section 36 of S.B.C. 1997, c. 37* at 19.
[196] *Police Act* at s. 56.
[197] *Ibid.* at s. 56.1(1). See also, e-mail correspondence from Cynthia Dyck, August 12, 2004.
[198] *Ibid.* at s. 59.1(2)(a).
[199] *Ibid.* at s. 60 and s. 60.1(2)(a).
[200] *Ibid.* at s. 60(4).
[201] CACOLE Compendium at 7.
[202] *Police Act* at s. 62(1).
[203] *An Act to amend the Royal Canadian Mounted Police Act and other Acts in consequence thereof*, Stat. Can.1986, c.11.
[204] Canada, SI/88-103 (made all of Stat. Can. 1986, c. 11 effective 30 June 1988 except Part VII); Canada, SI/88-214 (made Part VII effective 30 September 1988); see *Royal Canadian Mounted Police Act (Re)*, [1991] 1 F.C. 529 (C.A.).

the RCMP organization.[205] The Commission, chaired by Shirley Heafey, can, in theory, be composed of up to 31 members who are appointed by the federal Cabinet for renewable five-year terms and can be removed only for cause.[206] Apart from a Chair and a Vice-Chair, there can be one person representing each of the provinces that contract for the services of the RCMP (after consultation with the province concerned) and up to three other appointees.[207] The Commission – again in theory – has broad representation across Canada.[208] At present, however, only the Chair and the Vice-Chair, both full-time, are members of the Commission. The cabinet has not yet replaced any of the other members who have retired or resigned.[209] Apart from the two full-time members, the Commission has a staff complement of 44 persons and a budget of just under $5 million.[210]

The Commission does not deal with discipline cases that are brought by the RCMP against a member when there has not been a public complaint. In such cases, appeals are heard by another body, the External Review Committee, also set up by the 1986 Act.[211] The review committee consists of up to 5 members[212] and has a budget of almost $1 million.[213] It hears appeals from internal discipline cases and other grievances. The discipline and public complaints procedures are kept separate, as they had been in Ontario prior to the 1997 legislation, which merged the tribunals dealing with appeals involving public complaints and internal discipline.[214]

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[205] Canada, Commission for Public Complaints Against the RCMP, News Release, "New English Name for the RCMP Public Complaints Commission," (5 January 2001) online: www.cpc-cpp.gc.ca/DefaultSite/NewsRoom/index_e.aspx?articleid=258.

[206] *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.29(4).

[207] *Ibid.* s. 45.29(1)-(2).

[208] Paul Ceyssens, *Legal Aspects of Policing*, v.2 (Saltspring Island, B.C.: Earlscourt Legal Press, 2002) at 7-13.

[209] Telephone conversation with Steven McDonell, senior counsel to the Commission, on July 8, 2004. The Commission's web site as of September 2004 does not indicate any change in the composition of the Commission.

[210] Canada, Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Minister of Public Works and Government Services, 2003) at 11; Canada, Commission for Public Complaints Against the RCMP, *Performance Report*, (2003).

[211] See *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, Parts II and III.

[212] *Ibid* .s. 25(1). Apparently there is only one member at this time: telephone conversation with Martin Griffin, legal counsel to the Committee, on June 28, 2004.

[213] Canada, Royal Canadian Mounted Police External Review Committee, *Report on Plans and Priorities 2003*, www.erc-cee.gc.ca/english/reports/plansand_2003.html.

[214] *An Act to renew the partnership between the province, municipalities and the police and to enhance community safety*, S.O. 1997, c.8, s. 35 (creating s. 56(1)-(2) and s. 70 of the *Police Services Act*); see also Paul Ceyssens, *Legal Aspects of Policing*, v. 1, at 5-65.

The Commission for Public Complaints Against the RCMP is closer to the present Ontario complaints model than to Quebec's. As in Ontario, the police do the investigations, hold internal hearings, and impose penalties. Complaints received by the Commission are sent on to the RCMP,[215] unless they are first informally resolved by the Commission.[216] In contrast, the independent Quebec Commission does the investigations and another independent body holds hearings. The federal Commission's jurisdiction is somewhat broader than that of the Ontario Commission in that there are no restrictions on who can complain,[217] whereas in Ontario only a person 'directly affected' can bring a complaint.[218]

There is no requirement, as in Ontario, that the complaint be in writing.[219] There were just under 900 formal complaints to the Commission in the year 2002-2003.[220] The Commission has been struggling to keep up with its present work load. In its performance report for the year ending March 31, 2003, the Commission stated: 'The greatest risk the Commission faces when trying to fulfill its mandate is providing services in a timely manner. It has been a constant challenge since the inception of the Commission. There have been more requests for review received each year than the Commission can process…The caseload at the end of March 2003 was comprised of over 400 cases awaiting evaluation.'[221] The Commission has been trying to keep up with the workload by adopting alternative dispute resolution techniques for cases that come to it initially and if successful do not go through the formal public complaint process.[222] The Commission does not expect its caseload to be current for another three years.[223]

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[215] *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.35(3).
[216] Shirley Heafey, "Civilian Oversight: Balancing Risks, Rights and Responsibilities" (Speech delivered to Canadian Association for Civilian Oversight of Law Enforcement, 5 October 2003) online: www.cpc-cpp.gc.ca/DefaultSite/NewsRoom/index_e.aspx?articleid=445.
[217] *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.35(1).
[218] *Police Services Act*, R.S.O. 1990, c. P.15, s. 57(1).
[219] Paul Ceyssens, *Legal Aspects of Policing*, v.2, at 7-34 and 7-35.
[220] Canada, Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Minister of Public Works and Government Services, 2003) at 18.
[221] Canada, Commission for Public Complaints Against the RCMP, *Performance Report*, (2003).
[222] Shirley Heafey, "Civilian Oversight: Balancing Risks, Rights and Responsibilities" (Speech delivered to Canadian Association for Civilian Oversight of Law Enforcement, 5 October 2003) online: www.cpc-cpp.gc.ca/DefaultSite/NewsRoom/index_e.aspx?articleid=445; see also Canada, Commission for Public

As in Ontario, the Commission for Public Complaints is not kept informed of complaints received by the police,[224] whether they were made by citizens or other police officers.[225] The RCMP Code of Conduct requires that 'a member shall report promptly, in accordance with procedures approved by the Commissioner, any contravention of the Code of Conduct by any other member,' but there is no requirement that such a report be passed on to the complaints Commission.[226] Section 45.47 of the Act requires the RCMP Commissioner to 'establish and maintain a record of all complaints received by the Force under this Part; and…on request, make available to the Commission any information contained in the record.' The Commission does not, however, request information under this section[227] and it is therefore not known what information would be given to the Commission if a request were made. Citizens' complaints made directly to the police therefore come to the Commission's attention only if the complainant is not satisfied with the handling of the complaint by the RCMP and the complainant appeals to the Commission. The Quebec Commission, as discussed in an earlier section, has – in theory – knowledge of and jurisdiction over all complaints received by the police.

The federal Commission has, however, the right to institute a complaint and also has the right to conduct an investigation and hold a hearing if the chair of the Commission 'considers it advisable in the public interest…whether or not the complaint has been

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Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Minister of Public Works and Government Services, 2003) at 5.

[223] Canada, Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* at 6.

[224] Section 45.35 (1) (b) provides that complaints can be made to members of the RCMP and subsection 3 states that "The Commissioner shall be notified of every complaint under subsection (1)", but there is no such obligation in the section to inform the Commission. In the testimony of Garry Loeppky of the RCMP before the Commission on July 7, 2004 at page 1458 it is stated: "The investigation is done by the RCMP and the results are provided to the complainant and copied to the Commission.' This only occurs, however, if the complaint was originally made to the Commission. This point was verified in a telephone conversation with senior counsel to the Complaints Commission on July 12, 2004.

[225] See Paul Ceyssens, *Legal Aspects of Policing*, v.2, at 7-46: "The Act does not require the Commission to monitor or even be notified of a complaint."

[226] Section 46(1) of the 1988 regulations: Royal Canadian Mounted Police Regulations, 1988, Code of Conduct, Canada, SOR/88-361. Note also section 37(e) of the RCMP Act which provides that 'It is incumbent on every member…to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue.' The Code is authorized by section 38 of the RCMP Act.

[227] Discussion with members of the Commission, 16 June, 2004.

investigated, reported on or otherwise dealt with by the Force.'[228] The Commission adopts this 'public interest' procedure once or twice each year.[229] It did so, for example, in the well-known APEC case, arising from RCMP conduct in 1997 in Vancouver in which pepper spray was used against protesters,[230] and in the Maher Arar case.

The APEC case, which started in early 1998,[231] involved an aborted hearing, a number of court cases, and a lengthy hearing by former Justice Ted Hughes. That was the last hearing that the Commission undertook. In all, there have been 17 public hearings from the inception of the Commission in 1988 to the end of March 2003.[232] The use of the section over the past few years has been restricted to investigations.[233]

In the Arar case, a complaint was instituted by Ms. Heafey.[234] An investigation was started, but has been suspended pending the outcome of this Inquiry. Other public investigations have involved police conduct at a demonstration in 1997 concerning the closing of French language schools in New Brunswick[235] and, more recently, police handling of a person arrested who was suffering from mental illness.[236] In late May 2004,

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[228] *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.43(1).

[229] Canada, Commission for Public Complaints Against the RCMP, "Press Releases," online: www.cpc-cpp.gc.ca/DefaultSite/NewsRoom/index_e.aspx?articleid=48.

[230] Canada, Commission for Public Complaints Against the RCMP, *Commission Interim Report*, (2003), online: www.cpc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?articleid=58; W. Wesley Pue, *Pepper in Our Eyes: The APEC Affair* (Vancouver: UBC Press, 2000).

[231] News release, February 20, 1998, RCMP Complaints Commission web site.

[232] Canada, Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Minister of Public Works and Government Services, 2003) at 23.

[233] Discussion with the RCMP Complaints Commission on 16 June, 2004.

[234] Canada, Commission for Public Complaints Against the RCMP, News Release, "Commission for Public Complaints Against the RCMP Initiates Complaint into RCMP Conduct in Relation to the Deportation and Detention of Mr. Maher Arar" (23 October 2003) online: www.cpc-cpp.gc.ca/DefaultSite/Whatsnew/index_e.aspx?ArticleID=467.

[235] Canada, Commission for Public Complaints Against the RCMP, *Chair's Final Report Pursuant to Subsection 45.46(3) of the RCMP Act Following a Public Interest Investigation Pursuant to Subsection 45.43(1) of the RCMP Act with Respect to the Events of May 2 to 4, 1997 in the Communities of Saint-Sauveur and Saint-Simon, New Brunswick*, (22 March 2001) online: www.cpc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?ArticleID=343.

[236] Canada, Commission for Public Complaints Against the RCMP, News Release, "Mental Health Week: RCMP Officers Need Better Training," (4 May 2004) online: www.cpc-cpp.gc.ca/DeafultSite/NewsRoom/index_e.aspx?articleid=500.

a public interest investigation was launched into RCMP investigations into alleged sexual abuse at the Kingsclear Youth Training Centre in New Brunswick.[237]

The Commission is, of course, limited by its budget. One major investigation and hearing, as in the APEC inquiry, can use up a significant part of the Commission's resources, particularly if it is required to fund counsel for the hearing panel and for the complainants.[238] The Commission has also produced some studies that are not directly linked to a specific complaint, such as one in 1999 on police pursuits.[239]

A. GOVERNMENT STUDIES LEADING TO THE 1986 RCMP ACT

There were two important federal studies leading to the *RCMP Act* of 1986. The first was the 1976 Marin report, officially called 'The Report of the Commission of Inquiry relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police,' chaired by Judge René Marin.[240] The second report was the 1981 Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, chaired by Justice David McDonald.[241]

Before the 1986 legislation, complaints were investigated, hearings were held, and discipline was applied by the RCMP without civilian oversight. The first RCMP directive on public complaints had appeared in 1964, stating that 'a complaint against the Force or a member shall be investigated immediately.' This led to the promulgation of RCMP

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[237] Canada, Commission for Public Complaints Against the RCMP, News Release, "Commission for Public Complaints Against the RCMP Initiates a Public Interest Investigation into Allegations Involving Kingsclear Youth Training Center in New Brunswick," (27 May 2004) online: www.cpc-cpp.gc.ca/DefaultSite/Whatsnew/index_e.aspx?ArticleID=504.

[238] Funding was a major issue in the APEC inquiry: see Karen Busby, "Raising the Dough: Funding for Lawyers at Public Inquiries," in W. Wesley Pue, ed., *Pepper in Our Eyes: The APEC Affair* (Vancouver: UBC Press, 2000) at 171 et seq.

[239] Canada, Commission for Public Complaints Against the RCMP, *Police Pursuits and Public Safety*, (1999), online: www.cpc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?ArticleID=94.

[240] Canada, *The Report of the Commission of Inquiry relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police* (Ottawa: Information Canada, 1976) (Chair: Judge René J. Marin) ("Marin Commission" and "Marin Report").

[241] Canada, Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security Under the Law*, Second Report, v. 2, (Ottawa: Minister of Supply and Services Canada, 1981) (Chair: Justice David McDonald) ("McDonald Commission" and "McDonald Report").

standing orders relating to public complaints.[242] Of course there could also be external investigations, such as the McDonald Commission, as well as criminal charges against RCMP officers.

The 1976 Marin Commission examined the then recently released report by Arthur Maloney to the Toronto police board, which had recommended that the police investigate and discipline members of the Force, but recommended that an external body do the adjudication.[243] Marin, however, did not agree with this aspect of Maloney's report, stating: 'This model, in completely removing the adjudicative function from the responsibility of police management, departs from the Commission's philosophy that management must retain initial responsibility for action in this and all other aspects of public complaint procedures.'[244] He wanted the review body to enter the picture after the RCMP had completed the discipline process. Appeals to an outside body by a dissatisfied complainant or by a member of the Force who had a grievance or was disciplined by the Force would, in Marin's view, be heard by a new body, the Federal Police Ombudsman.[245] The Ombudsman would be appointed for a fixed term by Parliament and be responsible to Parliament.[246]

The Ombudsman, according to Marin, would have general powers of oversight of the public complaints process. The Ombudsman would not only provide a 'review of any particular complaint'[247] and 'appoint tribunals to hold hearings convened for the purpose of determining the merits of a complaint',[248] but would also have the responsibility for 'ascertaining that all complaints are investigated in an appropriate matter.'[249] Further, the Ombudsman would have the responsibility for 'recommending such remedial action as he believes necessary at both the individual and organizational level.'[250] Marin would give

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[242] Marin Report at 40.
[243] Maloney Report, *supra* note 9.
[244] Marin Report at 69.
[245] *Ibid.* at 72, 83, 93 and 102.
[246] *Ibid.* at 104-6.
[247] *Ibid.* at 103.
[248] *Ibid.* at 104.
[249] *Ibid.* at 102.
[250] *Ibid.* at 102.

the Ombudsman all of the authority vested in a commissioner appointed pursuant to the *Inquiries Act*, stating: 'Without full powers of inquiry, the ombudsman would be unable to fulfill his role as a watchman on behalf of Parliament.'[251]

Marin would not give the Ombudsman power to impose discipline. That would remain with the RCMP. But the Ombudsman's annual and other reports and the publicity generated by the publication of the Ombudsman's findings would, in Marin's view, help ensure that the process was fair to complainants and individual officers. The federal government introduced legislation in 1978 to establish a federal Ombudsman to handle complaints arising in all federal departments and agencies.[252] Marin had, however, recommended against such an all-purpose scheme, stating that the 'Federal Police Ombudsman should not be subsumed by an Ombudsman with a more general mandate. The size and geographic distribution of the Force, the multiplicity of its duties as federal, provincial and municipal police, as well as the nature and visibility of its contact with the public, indicate the need for the services of a specialized ombudsman.'[253] The Federal Ombudsman legislation died on the order paper[254] and has not been enacted since. One result of the Marin Report was that at the end of 1978 the RCMP established a unit called the Complaints Section within its Internal Affairs Branch at Headquarters to receive complaints and forward them to the appropriate regions.[255]

The McDonald Commission agreed with the Marin Report that there should be a specialized external review body, but they wanted to go further than the Marin recommendations. 'We believe the institution of the Ombudsman,' they wrote, 'would not go far enough in meeting the needs we have identified. Our view is that the work of an external review body should go beyond the traditional role of the Ombudsman of responding to individual complaints and should involve a *continuing* review [the Commission's italics] of the adequacy of the RCMP's practices. Such matters, we feel, should be within the mandate of an external body charged not only with reviewing the

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[251] *Ibid.* at 103.
[252] Bill C-43, *An Act respecting the office of the Ombudsman and matters related or incidental thereto*, Stat. Can. 1977-78.
[253] Marin Report at 102.
[254] McDonald Report, v.2, at 986.
[255] *Ibid.* at 970.

RCMP's disposition of complaints, but also with identifying problems within the RCMP which may have contributed to the incidents in question.'[256]

Drawing on the recently created Office of Professional Responsibility that had been established in the Attorney General's department in the United States to have oversight of the FBI's activities, the McDonald Commission recommended the establishment of the Office of Inspector of Police Practices.[257] The office would be within the department of the solicitor general, appointed by the cabinet for a renewable five-year term and the Inspector would be subject to dismissal only for cause.[258] The RCMP would continue to have the initial responsibility for handling complaints,[259] but in order to carry out its mandate the Inspector would have the power to investigate complaints on its own.[260] This is similar to the power of the Chair of the present Commission to conduct 'public interest' investigations. But the McDonald Commission would have gone further and given the Inspector access to all complaints against the RCMP, whether initially made to the Inspector or to the RCMP.

'In addition to its investigatory role,' the McDonald Commission stated, 'the Office of the Inspector of Police Practices should have a second function – that of monitoring the RCMP's investigations of complaints and evaluating the RCMP's complaints handling procedures. To perform this role effectively, the Inspector should receive copies of all written complaints of RCMP misconduct and reports from the RCMP on the results of its investigations of these complaints.'[261] They quoted a noted expert on the police, Albert Reiss, who had written: 'Acquisition of the input and output information [relating to a complaint] is one of the most powerful monitoring devices available over an organization. Whoever has that information has the potentiality to assess where the problems of the organization lie.'[262]

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[256] *Ibid.* at 987.
[257] *Ibid.* at 985-6.
[258] *Ibid.* at 988.
[259] *Ibid.* at 981.
[260] *Ibid.* at 967.
[261] *Ibid.* at 978.
[262] Quoting Albert Reiss: McDonald Report, v.2, at 978.

Moreover, the McDonald Commission would not limit the Inspector's exploration to complaints, which for various reasons are often not made,[263] but would give the Inspector a general audit function. 'As part of this reviewing and evaluating role,' the McDonald Commission wrote, 'the Inspector of Police Practices should be empowered to inquire into and review at his own discretion or at the request of the Solicitor General any aspect of RCMP operations and administration which may relate to questionable behaviour on the part of RCMP members.'[264] These recommendations were consistent with the McDonald Commission's recommendations for an independent monitoring body, now SIRC, for the new national security organization, now CSIS, which is entitled to receive whatever information it wishes,[265] except for Cabinet documents.[266]

B. THE 1986 AMENDMENTS TO THE RCMP ACT

The pressure to bring in a federal complaints system became more intense after the exposure of wrongdoing by the RCMP in the McDonald Report. Further, the Supreme Court of Canada held in a 1981 decision that only a federally-established body could deal with complaints against the RCMP. Provincial attempts to discipline RCMP officers were therefore struck down.[267] The amendments to the *RCMP Act* in 1986, which set up the public complaints Commission, borrowed more heavily from the Marin Report than from the McDonald Report. There are many references to Marin in the debates and relatively few to McDonald. When McDonald is referred to, it is primarily to recite examples of past wrongdoing by the RCMP. In the end, the legislation was weaker than the Marin proposals.[268] Like the Marin scheme, the Commission is, in effect, an ombudsman. It has no power to impose a penalty. Only the RCMP Commissioner can do that. Its power is

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[263] McDonald Report at 971.
[264] *Ibid.* at 979 and 981.
[265] *Ibid.* at 967; see also *ibid.* at 884-887.
[266] *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23, s. 39(3).
[267] *Alberta (A. G.) v. Putnam* (1981), 62 C.C.C. (2d) 51. See also Donald J. Sorochan, "The APEC Protest, the Rule of Law, and Civilian Oversight of Canada's National Police Force," in W. Wesley Pue, ed., *Pepper in Our Eyes: The APEC Affair* (Vancouver: UBC Press, 2000) at 67.
[268] Donald J. Sorochan, "The APEC Protest, the Rule of Law, and Civilian Oversight of Canada's National Police Force," at 70.

the power of persuasion and the publicity that it can engender to persuade.[269] After a hearing, triggered by a complainant's appeal, the Commission issues an interim report, to which the RCMP Commissioner must respond and in which the Commissioner can accept or reject the Commission's findings.[270] The Commission then sends its final report with the Commissioner's response to the minister.[271] The Commission gives its report whatever publicity it thinks would help its position. It notes on its web site that over 94% of the Commission's adverse findings and recommendations are accepted by the RCMP Commissioner.[272]

The Commission's authority is limited to 'a complaint concerning the conduct in the performance of any duty or function under this Act…of any member or other person appointed or employed under the authority of this Act.'[273] As the Federal Court of Appeal stated in a 1994 case: 'Parliament did not retain the suggestion contained in the *Marin Report* that the complaint process should apply to complaints alleging the failure of the Force itself to meet public expectations.'[274]

The RCMP has always taken the position that they should be independent from government.[275] This remains an unclear area, as Kent Roach and others have shown.[276] The McDonald Commission, however, wanted the government to take greater responsibility for the RCMP, stating: 'The government must fulfill its democratic mandate by ensuring that in the final analysis it is the government that is in control of the

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[269] See *Re Royal Canadian Mounted Police Act*, [1991] 1 F.C. 529 at 560-1 (C.A.); see also *Muttray v. Canada (Royal Canadian Mounted Police Public Complaints Commission*, [1998] F.C.J. No. 1289 (T.D.) at para. 3 and *Singh v. Canada (Attorney General)*, [2000] F.C.J. No. 1007 (T.D.) at paras. 20-21.

[270] *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.45(14).

[271] *Ibid.* s. 45.46(3).

[272] Canada, Commission for Public Complaints Against the RCMP, "Welcome!" online: www.cpc-cpp.gc.ca/DefaultSite/Home/index_e.aspx?ArticleID=1 (accessed 29 June 2004).

[273] *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.35(1).

[274] *Canada (Commissioner of the Royal Canadian Mounted Police)*, [1994] 3 F.C. 562 (C.A.) at 586-87.

[275] Philip C. Stenning, "Someone to Watch over Me: Government Supervision of the RCMP," in W. Wesley Pue, ed., *Pepper in Our Eyes: The APEC Affair* (Vancouver: UBC Press, 2000) at 87 et seq.

[276] Kent Roach, "Four Models of Police-Government Relationships,' a paper prepared for the Ipperwash Inquiry and presented at a seminar on June 29, 2004; Stenning, "Someone to Watch over Me: Government Supervision of the RCMP," at 114-16.

police, and accountable for it.'[277] The McDonald Commission pointed out that section 5 of the *RCMP Act* 'clearly empowers the Minister to give direction to the Commissioner in regard to "the control and management of the Force and all matters connected therewith."'[278] This, the Commission argued is not inconsistent with the obligation to stay away from investigation, arrest and prosecution of individual cases.[279] It seems likely that the McDonald Commission would have been even less concerned about encroaching upon police independence if it were to involve a retrospective audit and analysis by an independent review body.

C. REQUESTS BY THE COMMISSION FOR GREATER POWERS

The powers of the Commission for Public Complaints Against the RCMP are limited. Unlike the Security Intelligence Review Committee (SIRC) that has almost complete authority[280] to review the activities of the Canadian Security Intelligence Service (CSIS) and receives reports on what CSIS does,[281] as well as ministerial directions to CSIS,[282] the Commission for Public Complaints, as we have seen, for the most part only becomes involved when persons complain directly to the Commission or complainants are dissatisfied with how the RCMP handled their complaints and appeal to the Commission.

Six months after 9/11, the chair of the federal Commission, Shirley Heafey, in a speech to the Canadian Institute for the Administration of Justice, publicly complained about the Commission's lack of powers.[283] 'The RCMP,' she said, 'may have greater powers, but the agency with oversight responsibility does not.' She went on to say:

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[277] Canada, Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security Under the Law*, Second Report, v. 2, (Ottawa: Minister of Supply and Service Canada, 1981) (Chair: Justice David McDonald) at 1006.

[278] *Ibid.* at 1011. For background to the section see Stenning, "Someone to Watch over Me: Government Supervision of the RCMP," at 90-91.

[279] McDonald Report at 1006; Philip C. Stenning, "Someone to Watch over Me: Government Supervision of the RCMP," in W. Wesley Pue, ed., *Pepper in Our Eyes: The APEC Affair* (Vancouver: UBC Press, 2000) at 101-2.

[280] Apart from seeing cabinet documents – *CSIS Act*, S.O. 1984, c. 21, s. 39(3).

[281] *CSIS Act*, R.S.C. 1985, c. C-23, s. 38.

[282] *Ibid.* s. 6(2).

[283] Shirley Heafey, "Civilian Oversight in a Changed World," (Speech delivered to the Canadian Institute for the Administration of Justice, 26 March 2002) online:

> When Parliament framed the CSIS Act and established the Security Intelligence Review Committee (SIRC), it recognized that, where matters of national security are concerned, there is always a great deal of secrecy surrounding operations. Accordingly, to ensure adequate oversight, SIRC was equipped with a large arsenal of oversight tools. For example: it has audit powers so it can look at any situation that it decides warrants review. As well, by law, certain activities of CSIS must be reported to the Security Intelligence Review Committee. And, most notably, SIRC has access to judicial warrants and the affidavits upon which they were obtained. The CPC does not have similar powers.

Under the RCMP Act, she pointed out, the 'process is complaint driven.' 'That means,' she stated:

> problems are generally drawn to my attention by a complainant. But what happens when a potential complainant doesn't know of the CPC's existence or, worse, is afraid to complain about the actions of the police?...Without a complaint and without the power to randomly review files, it is difficult to investigate and to assess RCMP use of the new powers…A search is authorized by warrant issued by a judicial official who has read an affidavit in support of the request for the warrant. If I don't have access to those documents, how can I, in good conscience, assure the Minister of Justice and the Solicitor General that I am overseeing the RCMP's use of these new powers?

The Commission, she concluded, 'requires additional powers and additional resources to restore balance – to balance the new powers and resources given to the RCMP for the purpose of combating terrorism.'[284]

In one major respect, the Ontario legislation gives an independent body greater power of investigation than the *RCMP Act* gives the Commission dealing with the RCMP. There is nothing in the federal legislation comparable to the Special Investigation Unit, which investigates every case involving death or serious injury that may have been the result of a criminal offence committed by a police officer.[285] It will be recalled that the budget for

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www.cpc-cpp.gc.ca/DefaultSite/NewsRoom/index_e.aspx?articleid=274 at 4.

[284] *Ibid.* at 4-5. See *Canada (Royal Canadian Mounted Police Public Complaints Commission) v. Canada (Attorney General)*, [2004] F.C.J. No. 1029 (T.D.). The case turned on the question of informer privilege. At the meeting with the Commission on June 16, 2004 the Commission stated that they have not yet decided whether to appeal the decision.

[285] *Police Services Act*, R.S.O. 1990, c. P.15, s. 113(5).

the Ontario SIU is about the same as the budget for the federal Commission for Public Complaints.[286]

Apart from the 'public interest' investigations, all investigations are done by the RCMP. It is therefore far different from the Quebec process which requires that the Ethics Commissioner do the investigations. The Quebec statute prohibits members or past members of the Force that is involved in the case from taking part in the investigation. Under the federal procedure, it is the division whose member is the subject of the complaint that normally conducts the initial investigation, although it can be assigned by the Commissioner of the RCMP to an internal investigation unit.[287]

5. MILITARY POLICE COMPLAINTS COMMISSION

The Military Police Complaints Commission (MPCC) MPCC is a civilian review body operating independently of the Department of National Defence (DND) and the Canadian Forces. The MPCC was established to make the handling of complaints involving the military police more transparent and accessible, to discourage interference with military police investigations, and to ensure that both complainants and members of the military police are dealt with impartially and fairly.[288]

The MPCC was established in 1999 as part of a major overhaul of the *National Defence Act*[289]. It was established in response to recommendations of various working groups that had reviewed the military justice system. The late Right Honourable Brian Dickson, Head of the Special Advisory Group on Military Justice and Military Police Investigation Services, recognized that independent review was of particular importance in the case of

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[286] The Ontario SIU had expenditures of $5,090,000 for the year ending March 31, 2003: Ontario, Special Investigations Unit, *Annual Report 2002-2003* (Mississauga: SIU, 2003) at 24.
[287] Canada, Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security Under the Law*, Second Report, v. 2, (Ottawa: Minister of Supply and Service Canada, 1981) (Chair: Justice David McDonald) at 968-9. See SOR/88-522, s.7 Commissioner's Standing Orders (Public Complaints).
[288] The First Independent Review by the Right Honourable Antonio Lamer of the provisions and operation of Bill C-25, submitted to the Minister of National Defence September 3, 2003 ("Lamer Review"), p. 77.
[289] *National Defence Act*, R.S.C. 1985, c. N-5, as amended.

Military Police, who are both members of the Canadian Forces and peace officers.[290] The potential vulnerability to the influence of the chain of command that Military Police may feel when fulfilling policing duties in their unit was explained in the Somalia Inquiry Report[291] as follows:

> Military Police are part of the chain of command. They take orders from their commanding officers about which incidents to investigate, and their chances for promotion are affected by their commanding officer's assessment of them. This makes it difficult for MP to treat their superiors as ordinary witnesses or suspects.[292]

A. THE MILITARY POLICE

There are approximately 1300 Military Police members in Canada and overseas. Military Police members have jurisdiction over all persons subject to the *Code of Service Discipline* throughout Canada and abroad, and have peace officer status for the purpose of enforcing the *Code of Service Discipline*.[293] In addition, they have peace officer status in respect of all persons, including civilians, when engaged in certain prescribed policing and security duties on or in DND property.[294] They thus have jurisdiction over members of the general public who commit offences on or in relation to DND property.

Most Military Police officers are assigned to active military units, where they provide policing functions but also serve as members of the Canadian Forces. Approximately 110 members of the Military Police are a part of the Canadian Forces National Investigation Service (NIS). This is a special unit that is under the supervision of the Canadian Forces Provost Marshal, but is separate from the operational chain of command (i.e. the chain applicable to the Army, Navy and Air Forces). Members of the NIS investigate the more serious criminal or military offences and conduct "sensitive" investigations, which are

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[290] Report of the Special Advisory Group on Military Justice and Military Police Investigation Services, March 25, 1977.
[291] Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Canada, 1997) ("Somalia Inquiry Report").
[292] *Ibid.*, at 1271.
[293] The *Code of Service Discipline* is set out in the *National Defence Act, supra* note 2, Part III. See also the *Criminal Code of Canada*, s. 2(g)(i) – Definition of "peace officer", and *National Defence Act*, s. 156.
[294] *Criminal Code of Canada*, s. 2(g)(ii) – Definition of "peace officer"; *Nolan v. The Queen* (1987), 34 C.C.C. (3d) 289; *R. v. Haynes*, [1994] N.S.J. No. 152 (N.S.C.A.).

those involving a senior officer or equivalent civilian employee of DND, as well as those involving sensitive material or instances which could bring discredit to DND. In addition, there are approximately 40 Military Police in the National Counter-Intelligence Unit (NCIU) under the command of the Deputy Chief of Defence Staff, within J2 (Director of Intelligence). Some of the members serving in the NCIU may participate in joint operations with the RCMP or other agencies through INSETs or IBETs teams where there is a military nexus.

B. OPERATION OF THE MPCC

The MPCC has jurisdiction over two kinds of complaints: conduct complaints and interference complaints. In each case, the MPCC has divided jurisdiction, as will be discussed below. The MPCC has jurisdiction over conduct complaints only where they relate to the performance of policing duties and functions. The MPCC has jurisdiction over interference complaints only where they relate to an investigation.

Since its creation in December, 1999, the MPCC has received 266 conduct complaints and six interference complaints. The MPCC has conducted 27 requests for review and eight investigations in the public interest. [295]

Section 250.18 of the *National Defence Act* provides:[296]

> Any person, including any officer or non-commissioned member, may make a complaint under this Division about the conduct of a member of the military police in the performance of any of the policing duties or functions that are prescribed for the purposes of this section in regulations . . .

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[295] Information provided by the MPCC, October 12, 2004.
[296] *National Defence Act*, *supra* note 2, s. 250.18; emphasis added.

The relevant regulations provide as follows:[297]

> 2(1) For the purpose of subsection 250.18(1) of the Act, any of the following, if performed by a member of the military police, are policing duties or functions:
>
> (a) the conduct of an investigation;
>
> (b) the rendering of assistance to the public;
>
> (c) the execution of a warrant or another judicial process;
>
> (d) the handling of evidence;
>
> (e) the laying of a charge;
>
> (f) attendance at a judicial proceeding;
>
> (g) the enforcement of laws;
>
> (h) responding to a complaint; and
>
> (i) the arrest or custody of a person.
>
> (2) For great certainty, a duty or function performed by a member of the military police that relates to administration, training, or military operations that result from established military custom or practice, is not a policing duty or function.

A conduct complaint may be made orally or in writing to any member of the Military Police, the Chairperson of the MPCC ("Chairperson"), the Judge Advocate General or the Canadian Forces Provost Marshal. The complaint is acknowledged and the subject of the complaint is advised of the allegation, unless this might adversely affect or hinder an investigation.[298] Both the complainant and the subject are periodically advised of the progress of the matter until it is resolved.[299]

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[297] Complaints About the Conduct of Members of the Military Police Regulations, P.C. 1999-2065, November 18, 1999, s.2; emphasis added.
[298] *National Defence Act, supra* note 2, s. 250.22.
[299] *Ibid.*, s. 250.3.

The Provost Marshal is initially responsible for dealing with conduct complaints.[300] Subject to informal resolution, the Provost Marshal is to investigate a conduct complaint, but may direct that no investigation be started or that an investigation be ended if the complaint is frivolous, vexatious or made in bad faith; could more appropriately be dealt with according to a procedure under another part of the *National Defence Act*, or under any other act of Parliament; or, having regard to all the circumstances, investigation is not necessary or reasonably practicable.[301]

Upon the completion of an investigation into a conduct complaint, the Provost Marshal is to send to the complainant, the subject and the Chairperson of the MPCC a report setting out a summary of the complaint, the findings of the investigation, a summary of action that has or will be taken, and the right of the complainant to refer the complaint to the MPCC for review if the complainant is not satisfied with the disposition.[302]

A complainant who is dissatisfied with the direction made by the Provost Marshal to refuse or end informal resolution or an investigation, or the disposition of the conduct complaint, may request that the MPCC review the matter.[303] In such a case, the Provost Marshal shall provide to the Chairperson all information and materials relevant to the complaint.[304] In addition, the MPCC may decide at any stage to intervene in a conduct complaint "in the public interest" (see Part 5, below).[305]

After reviewing the matter, the Chairperson may investigate any matter relating to the complaint. Upon the completion of the review, the Chairperson shall send a report to the Minister, the Chief of Defence Staff and the Provost Marshal setting out the

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[300] *Ibid.*, s. 250.26; note that if the conduct complaint is about the conduct of the Provost Marshal, the Chief of Defence Staff is responsible for dealing with the complaint and has all the powers and duties of the Provost Marshal. In practice, these duties and the duties of the Provost Marshal are delegated to her deputies. Military Police Complaints Commission, Submissions With Respect to the Independent Review of Bill C-25 to the Right Honourable Antonio Lamer, April 9, 2003, at p. 9.
[301] *National Defence Act*, *supra* note 2, s. 250.28.
[302] *Ibid.*, s. 250.29.
[303] *Ibid.*, s. 250.31.
[304] *Ibid.*, s. 250.31(2).
[305] *Ibid.*, s. 250.38.

Chairperson's findings and recommendations with respect to the complaint.[306] After reviewing the Chairperson's report, the Provost Marshal prepares and sends to the Chairperson a Notice of Action, setting out her intended response to the complaint and her reasons for not acting on any finding or recommendation of the Chairperson.[307] After considering the Provost Marshal's Notice of Action, the Chairperson then prepares her final report on the complaint, which goes to the same officials as her initial report, but also to the complainant and the Military Police member who is the subject of the complaint.[308]

The *National Defence Act* provides that a complaint must be made within one year after the event giving rise to the complaint[309], although in certain circumstances the Chairperson may extend the time limit at the request of the complainant.

There have been some differences of interpretation between the MPCC and the Provost Marshal's office as to whether or not a matter falls within the definition of "policing duty or function", and thus engages the jurisdiction of the MPCC. For example, the Provost Marshal's office takes the position that when Military Police who are members of the Provost Marshal's Professional Standards Staff are investigating professional misconduct complaints against fellow Military Police, they are not involved in policing duties or functions. However, it should be noted that, unlike the many of the internal affairs units of civilian police services, the Professional Standards Staff does not investigate the commission, or alleged commission, of criminal or service offences by fellow Military Police members. If such allegations are made, or if such offences are uncovered during the course of a conduct investigation, then the matter is referred to the NIS, whose investigation is considered to be a policing duty or function that is subject to MPCC review.

Generally speaking, the Provost Marshal's office takes the view that it is implicit in the notion of "policing duties or functions" that the relevant Military Police activities must

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[306] *Ibid.*, s. 250.32.
[307] *Ibid.*, s. 250.51.
[308] *Ibid.*, s. 250.53.
[309] *Ibid.*, s. 250.2.

relate to law enforcement. The Provost Marshal's office views the function of the NCIU as limited to security and intelligence gathering, directed toward preventive rather than prosecutorial action. It thus seems likely that those members of the Military Police assigned to the NCIU would not be regarded by the Provost Marshal as being involved in "policing duties or functions", and hence not subject to the jurisdiction of the MPCC.

Some of these differences in interpretation of "policing duty or function" between the MPCC and the office of the Provost Marshal may be eliminated through the upcoming implementation of a recent independent review of the legislation, which was conducted by former Supreme Court of Canada Chief Justice, the Rt. Hon. Antonio Lamer. One of Mr. Lamer's recommendations was that this particular definition be clarified.[310]

C. INTERFERENCE COMPLAINTS

Any member of the Military Police who conducts or supervises an investigation who believes on reasonable grounds that an officer, non-commissioned member or senior official of the DND, has "improperly interfered with the investigation", including by intimidation and abusive authority, may make a complaint about that person. The MPCC has sole jurisdiction to deal with interference complaints. Of note is that the alleged interference must occur only with respect to an investigation, and not with respect to any other duties or functions such as the decision as to lay a charge.

D. PUBLIC INTEREST JURISDICTION

If she considers it advisable "in the public interest", the Chairperson may at any time cause the Complaints Commission to conduct an investigation and, if circumstances warrant, hold a public hearing into a complaint. The MPCC may deal with both conduct and interference complaints under the public interest provision.[311] The only time the

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[310] Lamer Review, *supra*, note 1, pp. 75-77 and Recommendation 60.

[311] *National Defence Act, supra* note 2, ss. 250.38 and 250.4. See also *Guide to Governing Public Interest Investigations Conducted by the Military Police Complaints Commission*, Military Police Complaints Commission (11 December 2002; updated March 3, 2003).

MPCC has the power to compel the attendance of witnesses or the production of documents is for public interest hearings under section 250.38 of the *Act*.

6. SOME QUESTIONS

Some questions that the Arar Commission will need to consider include the following:

1. Is the Commission for Public Complaints Against the RCMP as presently structured the appropriate mechanism for reviewing the RCMP's activities with respect to national security?
2. Should the Commission for Public Complaints Against the RCMP have the power to investigate RCMP activities where there has not been a public complaint?
3. Should it have subpoena and other powers for its investigations?
4. Should it be informed of all allegations of wrongdoing by the RCMP, as in Quebec?
5. Should it be informed of all internal police discipline hearings, as in Quebec?
6. Should the Commission for Public Complaints Against the RcMP and the External Review Committee that handles internal discipline and grievances be merged into a single body, as in Ontario?
7. Should the Commission for Public Complaints have audit powers to investigate whatever it wishes?
8. Do wider powers interfere with the independence of the police?
9. Could wider powers, such as an audit function, be given to the Commission for Public Complaints in the national security area without giving such powers to the Commission in other areas?
10. If its full complement of up to 31 members were filled, would the Commission be too large a body to handle reviews? Would it function efficiently? How would it need to be restructured?
11. What qualifications and expertise are required to review the RCMP's activities with respect to national security?

12. *Is the present appointments process the proper one?* Should the opposition parties be consulted? Should the members be appointed by the legislature, as happens in British Columbia?
13. How could security of testimony, documents, and sources be ensured if the Commission conducts national security reviews? At present, only the senior people are given top secret clearances. Would there be secure premises?
14. Does the Commission for Public Complaints have the capacity to take on more work in view of its backlog?
15. Should the Commission for Public Complaints be given the right to have access to all warrants and the affidavits behind them?
16. Should the Commission for Public Complaints be given the right to obtain documents that reveal the identity of confidential informants?
17. Could jurisdiction between the complaints tribunal be shared with SIRC? If so, how could it be done? Could the Commission for Public Complaints handle all matters except certain specified matters that would be handled by SIRC? Could investigations of national security search warrants and wiretaps be handled solely by SIRC? What else could be handled by SIRC? The use of the special powers created under the *Anti-terrorism Act*? Offences under the *Security Offences Act*?[312] Conduct involving treason, sedition, and other clear national security offences? Activities undertaken by the INSETs consisting of members of CSIS and provincial and other police forces, headed by the RCMP?
18. Should SIRC have the right to take over an investigation started by the Commission for Public Complaints?
19. Should SIRC have the right of first refusal of all complaints involving national security, just as the Inspector General of the Department of Justice in the United States has the right of first refusal of all complaints made to the Office of Professional Responsibility of the FBI?
20. If the full responsibility over members of the RCMP is given to the Commission for Public Complaints, how can one ensure that SIRC will have access to any

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[312] *Security Offences Act*, R.S.C. 1985, c. C-23.

investigations and audits conducted by the RCMP? Should SIRC receive full information on all RCMP wiretap applications involving national security?